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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,008	02/09/2004	Robert L. Doubler	2131.027	9085

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EXAMINER

WOODALL, NICHOLAS W

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/776,008

Applicant(s)

DOUBLER ET AL.

Examiner

Nicholas Woodall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>02/09/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 describes the first and second bonds to be autologous. A definition of autologous is, "derived from the same individual (www.dictionary.com), the examiner is unclear as to how the bonds are capable of being autologous. Therefore, the examiner will understand the claim so that the device has a first bone between the end cap and one end of the shaft and a second bond between the first end of a tang and the tang body.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-16 are rejected as understood under 35 U.S.C. 102(b) as being anticipated by Bramlet (U.S. Patent 6,183,474 B1).

Regarding claim 1, Bramlet discloses a device comprising an elongated cannulated shaft with tang exit holes and at least one deployable tang. Bramlet further

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discloses the device comprising an end cap bonded to one end of the shaft by a first bond (column 21 lines 48-64). Bramlet further discloses the device comprising a tang body slidably disposed in one end of the shaft, wherein the external surface of the tang body is congruently shaped to restrict movement of the tang body to the longitudinal axis of the cannulated shaft. Bramlet further discloses a device wherein the at least one tang includes a first end and a second end, wherein the first end is bonded to the tang body by a second bond. Bramlet disclose an embodiments wherein the at least one tang is unitarily bonded to the tang body (Figure 87 of the reference). The applicant does not require that the at least one tang and the tang body must be separate entities, only that the at least one tang and the tang body is bonded to the tang body. Bramlet further discloses a device wherein the second end of the at least one tang is capable of moving through one tang exit hole in the cannulated shaft upon longitudinal movement of the tang body. Bramlet further discloses a device wherein the tang body further includes a link capable of cooperating with a tool to generate longitudinal movement of the tang body. Regarding claims 2 and 8, it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claim 3, Bramlet discloses a device wherein the tang body is made from a first material, such as titanium, and the at least one tang is made from a second material, such as titanium. The applicant does not require the two materials to be different materials. Therefore, the tang body and the at least one tang can be made

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from the same material and still read upon the claim limitation. Regarding claim 4, Bramlet discloses a device wherein the tang body is made from titanium and the at least one tang is also made from titanium. The tang body has a first stiffness and the at least one tang has a second stiffness, wherein the second stiffness is lower than the first stiffness. The examiner is interpreting the word stiffness to relate to the rigidity or flexibility of an object. Bramlet discloses a device wherein the tang body is rigid and wherein the tangs are thinner and longer and therefore less rigid in order to deform through the exit holes and into the bone of the patient. Regarding claim 5, Bramlet discloses a device wherein the at least one tang has a rectilinear shape defining planar sides having dimension, wherein the dimensions affect the stiffness of the at least one tang. Regarding claim 6, Bramlet discloses a device wherein the external surface of the tang body includes planar sections, wherein the first end of the at least one tang is bonded to a planar section (Figure 53 of the reference). Regarding claim 7, Bramlet discloses a device wherein the cannulated shaft and the end cap are made from titanium. Regarding claim 9, Bramlet discloses a device wherein the link comprises a central aperture through the tang body having internal threads capable of engaging a draw bolt. Regarding claim 10, Bramlet discloses the invention as claimed and discussed above. Regarding claim 11, Bramlet discloses a device wherein the cannulated shaft, the end cap, and the plurality of tangs are made from titanium, wherein the tangs have a stiffness that is less than the stiffness of the tang body as discussed above. Regarding claim 12, Bramlet discloses a device wherein the cannulated shaft includes a plurality of intersecting planar internal walls and the tang

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body includes a plurality of intersection planar exterior surfaces, wherein the internal walls of the shaft engage the exterior surfaces of the tang body to limit the movement of the tang body in the longitudinal direction as discussed above. Regarding claim 13, Bramlet discloses a device wherein the number of tangs is equal to 4. Regarding the welding of the tangs to planar surfaces of the tang body it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding claims 14-16, it is noted that the device of Bramlet appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER